

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

RSA.No. 708 of 2007()

AS./2006 of DISTRICT COURT, PALAKKAD
OS.91/2003 of MUNSIFF COURT, CHITTUR
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: APPELLANT/APPELLANT/DEFENDANT

RADHAKRISHNAN, S/O. KANDAMUTHEN,
AGED 45 YEARS, RESIDING AT NATTUKAL VALLYA
VATAMPATHY VILLAGE, CHITTUR TALUK.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL
SRI.BINOY VASUDEVAN

RESPONDENTS: RESPONDENT/PLAINTIFF

SELVAN, S/O. RAJAPPAN, AGED 41 YEARS,
POLLACHI ROAD, VALLIYAVALLAMPALLY VILLAGE,
CHITTUR TALUK.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER ON I.A.1467/2007 IN R.S.A.NO.708/2007

14.8.2007

DISMISSED

Sd/- M.Sasidharan Nambiar
Judge

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR, J.

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R.S.A NO.708 OF 2007

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Dated this the 14th day of August, 2007

JUDGMENT

This appeal is filed challenging the dismissal of the first appeal after dismissing the application filed under section 5 of the Limitation Act to condone the delay. The decree was for realisation of the amount due under Ext.A1 promissory note. The suit was decreed on 28.2.2004. The appeal was filed after a delay of 698 days. The delay is sought to be condoned on the ground that he was laid up due to multiple joint swelling and pain and was under the treatment at Unity Hospital, Palakkad. A medical certificate was produced. Learned District Judge on appreciation of evidence found that there is no valid ground to condone the delay. First appellate court also take note of the fact that appellant had admitted that he entered appearance in the execution petition and in fact filed an objection

to the execution petition. It is for this reason the first appellate court dismissed the application and consequently the first appeal is barred by time.

2. The question is whether the dismissal of that application warrants interference. When delay is of 698 days appellant has to satisfy the court that he was prevented for valid and sufficient reasons from filing the appeal in time. Though a medical certificate was produced, a copy of which was made available, first appellate court found that the certificate cannot be relied on to prove that appellant could not file the appeal in time. The fact that appellant had entered appearance while the executing court where the decree was being executed and filed an objection to the execution petition itself is sufficient to prove that illness of appellant projected as a ground is not a sufficient or valid ground to condone the delay. In such circumstance, no substantial question of law arises in the appeal. Appeal is

R.S.A.708/07

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dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006